IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 71 OF 1988
With
SECOND APPEAL NO. 72 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MATA SAVA BHARMAL - Appellant(s)
Versus
AHER VIRA KANA RAVA & ANR. - Respondent(s)

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Appearance :
MR. B.Y. MANKAD for Appellant(s).
MR. C.H. VORA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/11/2006

ORAL JUDGMENT

This judgement shall dispose of Second Appeal No.71 of 1988 and Second Appeal No.72 of 1988, which

arise out of a common judgement dated 30th November, 1987 passed in Regular Appeal Nos.36 of 1983 and 39 of 1983.

2. It appears that the appellant of Second Appeal No.71 of 1988 had filed Regular Civil Suit No.68 of 1979 seeking injunction against the defendants and at the same time, it also appears that Civil Suit No.59 of 1979 was filed by the contesting respondents as plaintiffs, seeking a declaration that even after partition of the property between the plaintiff and the defendants, the plaintiff's right to receive water from the well would continue as a quasi easement and the defendant (appellant in Second Appeal No.71 of 1988) would not be entitled to disturb their rights.

2.1 In each of the suits, the defendants of the suits filed their written statements, separate issues were cast, parties were allowed to lead evidence in each of the cases and after hearing the parties, the learned trial Court, by two separate and distinct judgements dated 10th January, 1983, decreed the suit of the appellant of Second Appeal No.71 of 1988, but, dismissed the suit filed by the present contesting respondents. As observed above, Regular Appeal No.36 of 1983 and 39 of 1983 were filed by the contesting respondents.

2.2 The learned first Appellate Court, by its judgement dated 30th November, 1987, allowed both the appeals, dismissed the suit filed by the appellant of Second Appeal No.71 of 1988 and decreed the suit filed by the contesting respondents.

3. The appeals have been admitted for hearing on the following substantial questions of law:

> *"Whether joint ownership of a well ceases on partition of the land and the person in whose share the land in which the well situate goes automatically becomes the owner of the well in absence of any other arrangement?*

During the course of hearing, I have observed that each of the parties had filed separate suit, the suits were not consolidated, separate issues were cast in each of the suits, the parties had led evidence in accordance with the pleadings raised by them, against two separate judgements, two separate appeals were filed, but unfortunately, the learned first Appellate Court consolidated those appeals and disposed of both the appeals by a common judgement. Taking into consideration these facts, I frame the following substantial question

of law:

> *Whether on the facts and in the circumstances of the case, the judgement and decree passed by the learned first Appellate Court can be held to be valid when it disposes of two appeals by a common order when the appeals were arising out of separate judgements after reading the evidence of one suit in another suit and referring the pleadings of one suit in another suit?*

I have given notice of the additional question to Shri Vora, learned Counsel for the respondents-plaintiffs, contesting respondents.

4. Shri Vora, learned Counsel for the respondents, submits that if the parties did not raise any objection and the learned Appellate Court in its wisdom has disposed of both the appeals by a common judgement, then, such an issue cannot be raised in the High Court. The arguments raised by Shri Vohra unfortunately, looses sight of the legal position that if the suits are not consolidated, the Appellate Court would have no right to read the evidence led in one suit in the other suit. The pleadings, which are part of one suit, cannot be read in another suit. In the present matter, when two suits were separately tried and were disposed of by two separate

judgements, then, consolidation of the suits at the appellate stage would not be permissible. The learned first Appellate Court did not observe the basic principles of law and committed an illegality in disposing of both the appeals by a common judgement.

5. Each of the appeals deserves to be allowed. These are, accordingly, allowed. The judgement passed by the learned first Appellate Court is set aside. Each of the matters is remanded back to the learned first Appellate Court with a clear instruction that after securing attendance of the parties, the learned first Appellate Court shall dispose of each of the appeal by a separate judgement. No costs.

The interim arrangement made by this Court on 24th January, 1991 shall continue till the final disposal of the appeals by the learned first Appellate Court. Let necessary decree be framed in each of the appeals.

[R.S.Garg, J.]

*kamlesh**